

Amendment No. 1 to SB1020

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1020

House Bill No. 1142

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following as a new chapter:

62-57-101. Short Title. This chapter shall be known and may be cited as the “Safe Dog Purchasing Consumer Protection Act.”

62-57-102. Definitions. As used in this chapter:

(1) “Adult dog” means a *Canis familiaris* or *Canis familiaris* hybrid six (6) months or older;

(2) “Business hours” means between seven o’clock a.m. (7:00 a.m.) and seven o’clock p.m. (7:00 p.m.), Monday through Friday, except for legal federal holidays;

(3) “Chief law enforcement officer” means the duly elected sheriff or appointed police chief of a municipality;

(4) “Commissioner” means the commissioner of commerce and insurance, the commissioner’s designee or, in the absence of the commissioner’s designee or a vacancy in the office of commissioner, a deputy commissioner;

(5) “Consumer” means:

(A) Any natural person purchasing a dog from a professional dog breeder; and

(B) Does not include a business or corporation engaged in sales or services;

(6) “Department” means the department of commerce and insurance;

Amendment No. 1 to SB1020

Johnson
Signature of Sponsor

AMEND Senate Bill No. 1020

House Bill No. 1142

(7) "Euthanasia" means a method of humanely terminating the life of a dog that may be performed only by a licensed veterinarian or certified euthanasia technician;

(8) "Housing facility" means any land, premises, shed, barn, building, trailer, or other structure or area, housing, or intended to house dogs;

(9) "Inspection designee" means a person whose reputation in the community is that of a person with expertise, knowledge, and experience in the proper housing and care of dogs and who is appointed by the county mayor or county executive, or the municipal mayor, if appropriate, in conjunction with the chief law enforcement officer of the county;

(10) "Intact" means a dog that has not been altered by surgical, chemical, or physical means and still has the capability of breeding;

(11) "Licensee" means any person licensed according to this chapter and any rules promulgated pursuant to this chapter;

(12) "Owner" means any person who has a property right in a dog;

(13)

(A) "Professional dog breeder" means any person who possesses or maintains, under the person's immediate control, ten (10) or more intact female adult dogs in this state, at one time for the primary purpose of breeding and selling;

(B) Dogs described in this subdivision (13)(B) shall not be counted for purposes of determining the number of adult intact female dogs possessed by a

person, and a professional dog breeder does not include a person who possesses or maintains, under the person's immediate control, dogs for the primary purpose of:

- (i) Herding livestock or other agricultural uses;
- (ii) Hunting, including tracking, chasing, pointing, flushing, or retrieving game; or
- (iii) Competing in field trials, hunting tests, or any similar recognized dog sport;

(14) "Releasing agency" means:

- (A) A public animal shelter; or
- (B) A private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to dogs, or other similar entity or home-based rescue that releases companion dogs for adoption; and

(15) "Veterinarian" means a person who is licensed and in good standing to practice veterinary medicine pursuant to the Tennessee Veterinary Practice Act of 1967, compiled in title 63, chapter 12.

62-57-103. License Required. Any person or organization operating or intending to operate as a professional dog breeder shall have a valid license issued in accordance with this chapter. A person shall be at least eighteen (18) years of age to obtain a license.

62-57-104. License Application.

(a) A person seeking a license shall apply on a form furnished by the department. An application form, the implementing rules, and other necessary forms shall be maintained on the department's web site. The application shall include the signed on-site inspection report by the chief law enforcement officer of the county or the inspection designee.

(b) The applicant shall provide all information requested on the application form,

including a valid mailing address through which the licensee or applicant can be reached at all times, and a valid premises address where dogs, dog facilities, equipment, and records may be inspected for compliance. The applicant shall file the completed application form with the department. Each location where the person operates or keeps dogs shall be indicated on the application form or on a separate sheet attached to the form. The applicant shall also indicate whether the anticipated revenue from sales will be in excess of four thousand eight hundred dollars (\$4,800) annually. If the applicant does anticipate sales in excess of that amount, the applicant shall also provide a valid sales tax registration number.

(c) The completed application form, along with the application fee, the annual license fee, a criminal history record check from the Tennessee bureau of investigation or a similar office if the applicant resides in another state, and any report of the on-site inspection described in subsection (f) shall be filed with the department.

(d) No professional dog breeder shall breed or sell dogs without a valid license issued by the commissioner pursuant to this chapter. Each license is valid for two (2) years unless otherwise revoked or suspended.

(e) A license issued pursuant to this section is nontransferable and shall not be valid at a location other than the one for which it is issued.

(f)

(1) Prior to the department issuing an initial professional dog breeder's license to an applicant, the chief law enforcement officer or inspection designee of each county where the applicant has a location shall determine, through an on-site inspection, that the premises conforms to this chapter and the rules promulgated pursuant to this chapter. If the pre-licensure inspection reveals that the applicant is not in compliance, the chief law enforcement officer or inspection designee shall give that applicant a detailed list of noncompliant items. An

applicant may reapply at any time by submitting a reinspection request in writing to the chief law enforcement officer or inspection designee. Each inspection or reinspection request shall be accompanied by payment of the inspection or reinspection fee.

(2) Prior to issuing an initial professional dog breeder's license, the department shall determine that the applicant:

(A) Has, for at least ten (10) years prior to the date of the application, never been convicted or pled nolo contendere to animal cruelty or neglect, a violation of title 39, chapter 14, part 2, domestic assault under § 39-13-111, or offenses with the same or similar elements in another state;

(B) Does not operate, exercise control over, or maintain an interest in any releasing agency; and

(C) Provides a program of veterinary care signed by a veterinarian that includes:

(i) Documentation that the adult dogs are in good health for breeding;

(ii) At least one (1) hands-on examination of each adult dog annually and immediate veterinary treatment of any illness or injury;

(iii) Proof that current vaccinations against contagious and infectious diseases, which shall at least include canine distemper, adenovirus type II parainfluenza, bordetella, and parvovirus, have been and will be administered;

(iv) Rabies vaccinations for dogs six (6) months and older that shall be administered only by a licensed veterinarian and

proof of rabies vaccinations on each dog;

(v) A written program to address each dog's exercise and additional care needs, to be updated annually or as appropriate;

(vi) All surgical procedures including, but not limited to, cesarean sections, spays or neuters, or other major surgeries performed only by a veterinarian; and

(vii) Proof that procedures of tail docking and dewclaw removal for animals under one (1) week of age are performed under the indirect supervision of a veterinarian, with signed documentation from the veterinarian stating the proper methods and instruments that will be used, the proper sanitizing methods for the instruments, and an emergency veterinary treatment plan.

(g) Each license application shall contain a provision clearly stating that providing false information on any portion of the application subjects the applicant to prosecution for the offense of perjury under § 39-16-702(a)(3). The applicant shall declare, under penalty of perjury, that all information contained in the application is true and that the applicant is in compliance with this chapter and the rules promulgated pursuant to this chapter.

62-57-105. License Requirements.

(a) A licensee shall maintain all records required by this chapter and rules promulgated to implement this chapter for a period of five (5) years from the date a dog is sold, euthanized, or disposed of, unless otherwise ordered by the department or the court.

(b) Licenses shall be posted in a conspicuous place on the licensed premises. Current license numbers shall be included on all of the licensee's invoices,

advertisements, or promotions that pertain to a dog, including, but not limited to, newspapers, Internet, radio, or flyers.

(c) A licensee shall promptly notify the commissioner or chief law enforcement officer by certified mail or on the department's web site, in a form to be prescribed by the commissioner, of any change in the name, address, management, or substantial control or ownership of the licensee's business or operation, or of any additional sites, within ten (10) days of any change.

(d) If control or ownership of a business changes in such a substantial manner that the new owner or person in control is required to obtain a license, the licensee shall surrender the license to the department.

(e) The department shall maintain a list of licenses issued and post the list on its web site.

62-57-106. Fees.

(a) The commissioner, by rule, shall establish a fee schedule for licenses issued pursuant to this chapter. The fee schedule shall be designed to be revenue neutral to the department and shall include establishing the following fees:

- (1) Initial license application fee;
- (2) Initial license fee;
- (3) License renewal fee; and
- (4) Returned check fee.

(b) In establishing the fee schedule, each fee for an initial or renewal license shall be based, as determined by the commissioner, upon the number of intact female adult dogs maintained under the licensee's immediate control for the purpose of selling their offspring.

(c) The license fees shall be on a sliding scale depending on the number of intact female adult dogs maintained and shall be adjusted for inflation.

(d) If an applicant falsifies the total number of intact female adult dogs maintained under the licensee's immediate control for the purpose of selling their offspring in order to be in a lower fee schedule bracket, the applicant may be subject to a civil penalty, to be enforced by the department, of one thousand dollars (\$1,000) per dog falsified. The civil penalty is in addition to, and independent of, any applicable criminal charges that may be brought based upon the same conduct.

(e)

(1) The license application fee, the license renewal application fee, returned check fee, investigation and hearing cost, and any civil penalties assessed by the department shall be retained by the department for the purpose of defraying the costs of this chapter.

(2) All other fees and fines collected pursuant to this chapter and the rules promulgated pursuant to this chapter shall be transmitted to the county mayor or executive, or to the chief law enforcement officer in the county in which the fee or fine is collected, for the purpose of administering and enforcing this chapter.

(f) The amount of the inspection or reinspection fee shall be determined by the applicable municipal mayor, the county mayor, or the county executive, and approved by the department, but shall not exceed two hundred fifty dollars (\$250).

(g) A copy of the fee schedule indicating the fee and amount of any fee payable to the county or municipality shall be included on the municipality or county's web site or otherwise made available at the county clerk's office. Fees payable to the county or municipality shall be paid at the county clerk's office.

62-57-107. Inspection of Licensees.

(a) The premises, dogs, and records of any professional dog breeder shall be made available for inspection during business hours or at other times mutually agreeable

to the professional dog breeder and the inspecting official to ascertain compliance with this chapter and applicable rules.

(b) If an inspection reveals a violation of this chapter or rules promulgated pursuant to this chapter, the chief law enforcement officer of the county or the inspection designee shall give the professional dog breeder on the day of the inspection a detailed list of the violations found during the inspection.

(c) The professional dog breeder shall have ninety (90) days from the date of the inspection to correct the violations.

(d) During or at the end of the ninety-day period, the professional dog breeder shall notify the chief law enforcement officer or the inspection designee in writing of the actions taken to correct the violations. The premises of the professional dog breeder may be reinspected to determine compliance with this chapter and the applicable rules. If all violations contained on the list have been corrected and no other violations are found, no further action shall be taken with regard to those violations.

(e) If, at reinspection, the chief law enforcement officer or inspection designee finds that the professional dog licensee has not corrected the violations, the chief law enforcement officer or inspection designee shall report the violations and subsequent failure to correct to the commissioner. The commissioner may initiate proceedings in either the chancery court of Davidson county or the chancery court of the county where the violation is occurring for injunctive relief to prevent the continuance of the violations or to correct the conditions resulting in, or about to result in, the violations. The injunction shall also prohibit the sale of companion animals by the person until the person is in compliance with this chapter and the rules promulgated under this chapter.

(f) If the inspection reveals or there is credible evidence to believe a violation of title 39, chapter 14, part 2, exists on the premises, the inspection designee shall notify applicable local law enforcement and the commissioner in writing immediately. If the

chief law enforcement officer is the person who inspects, the officer shall notify any other law enforcement agencies and the commissioner of the evidence found.

(g) The commissioner has the authority to investigate through compliance audit or any other means necessary to determine compliance.

62-57-108. Refusal to Issue License.

(a) The commissioner may refuse to issue or renew a license of a professional breeder, may revoke or suspend a license of any professional breeder, or may impose any other lawful discipline against a licensee for any of the following reasons:

(1) A violation by the licensee of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1, that relates to the operation of dog kennels or commercial dog breeding;

(2) Knowingly falsifying material information contained in the application;

(3) The licensee's conviction or plea of nolo contendere, or that of any responsible officers or employees of the licensee, for any criminal offense involving animal cruelty or neglect, or any other violation of title 39, chapter 14, part 2, domestic assault under § 39-13-111, or offenses with the same or similar elements in another state within the previous ten (10) years;

(4) The licensee's nonconformance with this chapter or the rules promulgated pursuant to this chapter; or

(5) The licensee is, or would be, operating in violation or circumvention of any federal, state, or local laws.

(b) In addition to or in lieu of any other disciplinary actions, the commissioner may impose a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each day of continued violation constitutes a separate violation.

(c) Any professional dog breeder aggrieved by a final order of the commissioner issued under this section may appeal the order in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The commissioner is authorized to apply to courts of competent jurisdiction for writs of injunction for the enforcement of this chapter. It is the duty of the several district attorneys general to represent the commissioner when called upon to do so.

(e) If the commissioner imposes discipline on a licensee or unlicensed person, the licensee or unlicensed person may be required to pay the actual and reasonable costs of the investigation and prosecution of the case.

62-57-109. License Renewal.

(a) A license, unless sooner suspended or revoked, shall be renewable biennially upon application and payment of the renewal fee by the licensee if the licensee has complied with this chapter as confirmed by the annual inspections conducted by the chief law enforcement officer or inspection designee.

(b) Failure to file an application for renewal or failure to pay the required annual license fee on or before the expiration date of the license will result in automatic revocation of the license.

62-57-110. Revoked License, Restrictions on Reapplying.

(a) Any person whose license has been revoked shall not:

(1) Buy, sell, transport, offer for sale, or deliver for transportation any dog during the period of revocation;

(2) Be eligible to apply for another license for a period of five (5) years from the date of revocation; and

(3) Be licensed in the licensee's own name or in any other manner; nor may any partnership, firm, corporation, or other legal entity in which the licensee has a substantial interest, financial or otherwise, be licensed.

(b) Any person who has been an officer, agent, or employee of a licensee whose license has been revoked, and who is responsible for or participated in any violation upon which the revocation was based, shall not be eligible to apply for a license for a period of five (5) years from the date of final revocation.

(c) If the reason for the revocation is that the licensee was convicted or pled nolo contendere to animal cruelty charges or domestic assault, the licensee shall not be eligible to apply for another license for a period of ten (10) years from the date of revocation.

(d) If a person's license has been suspended for any reason authorized by this chapter or rules promulgated pursuant to this chapter, the person may apply to the commissioner, in writing, for reinstatement of the person's license. No license shall be renewed during the period that the license is suspended. If the suspension is overturned, the licensee, at that time, shall be eligible to have the license reinstated with possible restrictions or limitations at an administrative hearing conducted by the department.

62-57-111. Sale of Dogs, Requirements.

(a) The original of all records required by § 62-57-104(f)(2)(C) to be maintained on a dog shall be given to the purchaser of the dog at the time of purchase.

(b) In addition to the required license number, the licensee shall use on all advertising, letterhead, bills of sale, receipts, certificates, and sales contracts the caption:

“Licensed Tennessee Professional Breeder”

(c) If the purchaser wishes to have the dog examined by a veterinarian to determine if the dog is healthy, the purchaser shall have three (3) business days from the date of delivery to do so. If the dog is guaranteed by the seller, either in writing or through advertising, the owner shall notify the seller within five (5) days of delivery of a

negative veterinary report.

(d) Any written materials that pertain to a dog, including, but not limited to, the license and the dog's bill of sale, shall include in bold print the statement:

This license does not certify that the dog being sold has been examined by or is under the care of a licensed veterinarian.

62-57-112. Administrative Warrants Authorized.

(a) As used in this section:

(1) "Agency" means the commissioner, the chief law enforcement officer of a county, the inspection designee, or anyone authorized to enforce this chapter or rules promulgated pursuant to this chapter;

(2) "Inspecting official" means the inspection designee or any officer, official, or other person whose duty it is, or who is authorized, to enforce this chapter or rules promulgated pursuant to this chapter; and

(3) "Issuing officer" means:

(A) Any official authorized by law to issue search warrants;

(B) Any court of record in the county of residence of the agency making application for an administrative inspection warrant; or

(C) Any municipal court having jurisdiction over the agency making application for an administrative inspection warrant if the judge of that court is licensed to practice law in this state and authorized to issue a warrant.

(b) If an inspecting official is denied permission to make an inspection and a warrant is required by the Constitution of the United States or this state to perform the inspection, the inspecting official may obtain an administrative inspection warrant in accordance with the procedures outlined in this section. Title 40, chapter 6, part 1, shall not apply to warrants issued pursuant to this section.

(c) The issuing officer is authorized to issue administrative inspection warrants authorizing an inspecting official to inspect the premises named. In so doing, the issuing officer shall determine from the affidavits filed by the inspecting official, acting as an officer of the agency requesting the warrant, that:

(1) The agency has the statutory authority to conduct the inspection;

(2) Probable cause exists to believe that a violation of this chapter or rules promulgated pursuant to this chapter has occurred or is occurring. For the purposes of this section, probable cause is not the same standard as used in obtaining criminal search warrants. In addition to a showing of specific evidence of an existing violation, probable cause can be found upon a showing of facts justifying further inquiry, by inspection, to determine whether a violation of this chapter or a rule promulgated pursuant to this chapter is occurring. This finding can be based upon a showing that:

(A) Previous inspections have shown violations of this chapter or rules promulgated pursuant to this chapter, and the present inspection is necessary to determine whether those violations have been abated;

(B) Complaints have been received by the agency and presented to the issuing officer from persons who by status or position have personal knowledge of violations of this chapter or rules promulgated pursuant to this chapter occurring on the named premises;

(C) The inspection of the premises in question was to be made pursuant to an administrative plan containing neutral criteria supporting the need for the inspection; or

(D) Any other showing consistent with constitutional standards for probable cause in administrative inspections;

(3) The inspection is reasonable and not intended to arbitrarily harass the

persons or business involved;

(4) The areas and items to be inspected are accurately described and are consistent with the statutory inspection authority; and

(5) The purpose of the inspection is not criminal in nature, and the agency is not seeking sanctions against the person or business for refusing entry.

(d) The issuing officer shall immediately make a finding as to whether an administrative inspection warrant should be issued and, if the issuing officer so determines, issue the warrant. No notice shall be required prior to the issuance of the warrant.

(e) All warrants shall include at least the following:

(1) The name of the inspecting official requesting the warrant;

(2) The statutory or regulatory authority for the inspection;

(3) The names of any inspecting official authorized to conduct the administrative inspection;

(4) A reasonable description of the property and items to be inspected;

(5) A brief description of the purposes of the inspection; and

(6) Any other requirements or particularity required by the Constitution of the United States and this state regarding administrative inspections.

(f) All warrants shall be executed within ten (10) days of issuance.

(g) Any person who knowingly refuses to permit inspection, obstructs inspection, or aids in the obstruction of an inspection of property described in an administrative inspection warrant commits a Class C misdemeanor.

(h) Any person aggrieved by an unlawful inspection of premises named in an administrative inspection warrant may, in any judicial or administrative proceeding, move to suppress any evidence or information received by the agency pursuant to the

inspection.

(i) If the court or the administrative agency finds that the inspection was unlawful, the evidence and information shall be suppressed and not considered in any proceeding against the licensee.

62-57-113. Confiscation of Dogs, Authority. Nothing in this chapter shall grant authority to the commissioner or any other person to confiscate dogs in the possession of, or maintained by, a professional dog breeder. If it comes to the attention of the commissioner, the chief law enforcement officer's inspection designee, or any other person, that a violation of title 39, chapter 14, part 2, is occurring on the property of a professional dog breeder, the person shall notify any applicable law enforcement immediately and in writing. The chief law enforcement officer of the county shall authorize only a POST-certified law enforcement officer to conduct a confiscation of dogs. The law enforcement officer may enlist the assistance of a veterinarian or other personnel as necessary to effectuate the confiscation and treatment of dogs.

62-57-114. Rules.

(a) The commissioner is authorized to promulgate rules to effectuate the purposes of this chapter. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The rules shall include, but not be limited to, the following:

(1) A fee schedule as described in § 62-57-106;

(2) Operating standards and facility requirements for professional dog breeders;

(3) Requirements for:

(A) Facilities and housing;

(B) Mobile or traveling housing facilities; and

(C) Primary enclosures;

- (4) Compatible grouping of dogs;
- (5) Adequate veterinary care;
- (6) Exercising, feeding, and watering for dogs;
- (7) Cleaning, sanitization, housekeeping, and pest control; and
- (8) Professional dog breeder employees.

(c) Rules containing standards and requirements established by the commissioner shall assist in the development and promotion of best practices for professional dog breeders. In establishing the rules, the commissioner shall consider, without limitation:

(1) Corresponding standards established by the American Veterinary Medical Association (AVMA) in its “Model bill and regulations to assure appropriate care for dogs intended for use as pets” as published April 9, 2010, and any subsequent updates;

(2) Corresponding standards established by the American Kennel Club (AKC) in its “Care and Conditions of Dogs” policy as updated June 1, 2012, and any subsequent updates; and

(3) Corresponding rules, regulations, policies, forms, and materials developed in other states.

62-57-115. Preemption. Nothing in this chapter shall preempt or limit the powers of any county, municipality, or other unit of local government from adopting ordinances that are more stringent than this chapter.

62-57-116. Penalties.

(a) The knowing failure of any person to comply with this chapter or any rule promulgated pursuant to this chapter shall constitute grounds for the denial, revocation, or suspension of a license as provided in this chapter.

(b)

(1) Except as otherwise provided, any knowing violation of this chapter is a Class C misdemeanor.

(2) In addition to the criminal penalty set out in subdivision (b)(1), the commissioner may assess a civil penalty of one thousand dollars (\$1,000) per violation of this chapter, and each day of violation constitutes a separate violation.

(c) Nothing in this chapter shall preclude a person violating this chapter from also being prosecuted for any applicable criminal offense.

SECTION 2. For the purpose of promulgating rules as authorized by § 62-57-114, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2016, the public welfare requiring it.